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## DECISION DISMISSING CASE FOR INSUFFICIENT PROOF<sup>1</sup>

<sup>3</sup> The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) (“Vaccine Act” or “the Act”). Individual section references hereafter will be to § 300aa of the Act (but will omit that statutory prefix).

2018.<sup>4</sup> Pet., ECF No. 1. Petitioner filed several medical records in support of her claim. Exs. 1-8, ECF Nos. 21, 23. Petitioner filed a Statement of Completion on October 6, 2020. ECF No. 24.

On January 4, 2021, Respondent filed his Rule 4(c) report, indicating he believed that this case was “not appropriate for compensation under the terms of the Act.” Resp.’s Rep. at 1, ECF No. 26. Respondent argued that Petitioner had not “provided evidence that satisfies her burden of proof under *Althen*” and “Petitioner’s medical records do not establish that her HPV vaccinations were the likely cause of any of her symptoms.” *Id.* at 9.

Petitioner filed a motion to dismiss on August 11, 2021, indicating that “She wishes to pursue a third-party action in district court against Merck directly.” Pet’r’s Mot., ECF No. 31 at 2. Petitioner’s motion notes that “Petitioner simply needs a judgment from the Vaccine Program so that she may reject said judgment and submit her election to opt out.” *Id.* Petitioner further stated that, “In these circumstances, to proceed further would be unreasonable and would waste the resources of the Court, the respondent, and the Vaccine Program.” *Id.*

To receive compensation under the Vaccine Program, a petitioner must prove either (1) that he suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to his vaccination, or (2) that she suffered an injury that was actually caused by a vaccine. *See* §§ 13(a)(1)(A) and 11(c)(1). Moreover, under the Vaccine Act, a petitioner may not receive a Vaccine Program award based solely on his claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent medical expert. § 13(a)(1). In this case, however, there is insufficient evidence in the record for Petitioner to meet her burden of proof. Petitioner’s claim therefore cannot succeed and, in accordance with her motion, must be dismissed. § 11(c)(1)(A).

**Thus, this case is DISMISSED for insufficient proof. The Clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

**s/ Katherine E. Oler**

Katherine E. Oler  
Special Master

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<sup>4</sup> At the time, Petitioner was acting *pro se*. Mr. Downing was substituted in as counsel on July 29, 2020. ECF No. 18.